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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,056	11/13/2001	William Goggin	TOK00-028	3920

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/008,056

Applicant(s)

GOGGIN, WILLIAM

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-18 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

Formal drawings will be required when this application is issued because the numbers, lines and letters in each Figure are not uniform. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musil et al.

In regard to claim 1, 3 and 4, the Musil reference discloses an integrated vapor recovery and fuel "delivery system" (see Fig. 1) comprising a "fuel dispenser" (see Fig. 5) and a "member" (see Fig. 2B) having a "fluid conduit" (240-242) and "vapor conduit" 245, as claimed. The method of forming (i.e., extruding, which makes it an integral piece) the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Musil et al. do not

disclose the fluid and vapor conduits being integral. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fluid and vapor conduits integral, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

In regard to claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Musil et al. device of a metal material (if not already), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

Claims 1-4, 6-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guertin.

In regard to claims 1, 3, 4, 7, 9 and 10, the Guertin reference discloses an integrated vapor recovery and fuel "delivery system" (see col. 1, lines 11-14) comprising a "fuel dispenser" 10 and at least two "members" (12 and 14) having "fluid conduits" 138 and "vapor conduits" 135, as claimed. The method of forming (i.e., extruding, which makes it an integral piece) the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. The Guertin reference does not disclose the fluid and vapor conduits being integral. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fluid and vapor conduits integral, since it has been held that forming

in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

In regard to claims 2 and 8, the "members" are made of "metal" (i.e., cast aluminum; see col. 3, line 9).

In regard to claims 6 and 11, see "valves" 55 and 110 in Figures 1 and 2.

In regard to claims 12 and 14, see "adapter" 32 in Figure 1.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.

In regard to claim 1, 3 and 4, the Taylor reference discloses an integrated vapor recovery and fuel "delivery system" (see Figs. 2 and 2A) comprising a "fuel dispenser" 30 and a "member" 90 having a "fluid conduit" and "vapor conduit" (see various configurations in Figs. 3, 3A and 4), as claimed. Further, the method of forming (i.e., extruding) the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Taylor does not disclose the fluid and vapor conduits being integral. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fluid and vapor conduits integral, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

In regard to claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device of a metal material (if not already), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

In regard to claim 5, see "meter" 5.

In regard to claim 6, see "valve" 70a – 70c.

Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guertin in view of Payne.

The Guertin reference discloses the invention substantially as claimed (discussed supra), but does not disclose the specifics of the fuel dispensing system including meters to meter fuel flow. However, the Payne reference discloses another fuel dispenser having meters (24, 26, 28) to measure liquid flow rates. Therefore, it is well known in the art and would have been obvious for Guertin to employ meters on the dispenser (if not already) to measure fuel flow.

***Allowable Subject Matter***

Claims 15-18 are allowed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Further, the patentability of a product

does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tues. - Fri. 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.



Timothy L. Maust  
Primary Examiner  
Art Unit 3751

Tlm  
9/17/03